

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke  
Probation Against:

**RICHARD DANIEL FENTON**  
2360 Mendocino Avenue A2 #173  
Santa Rosa, CA 95403

Smog Check Inspector License No.  
EO 138504  
Smog Check Repair Technician  
License No. EI 138504

Case No. 79/16-28

OAH No. 2015120605


Respondent.

**DECISION**

The attached Stipulated Revocation of Licenses and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective April 29, 2016.

DATED: April 1, 2016

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 DIANN SOKOLOFF  
Supervising Deputy Attorney  
4 State Bar No. 161082  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2212  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against:

13 **RICHARD DANIEL FENTON**  
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14 Santa Rosa, CA 95403

15 Smog Check Inspector License No.  
EO138504  
16 Smog Check Repair Technician License No.  
EI138504  
17

18 Respondent.

Case No. 79/16-28

QAH No. 2015120605

**STIPULATED REVOCATION OF**  
**LICENSES AND ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
20 proceeding that the following matters are true:

21 PARTIES

22 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in his  
23 official capacity as the Chief of the Bureau of Automotive Repair (BAR), Department of  
24 Consumer Affairs.

25 2. Richard Daniel Fenton (Respondent) is representing himself in this proceeding and  
26 has chosen not to exercise his right to be represented by counsel.

27 3. In or about 1998, the BAR issued Advanced Emission Specialist (EA) Technician  
28 License No. 138504 to Richard Denton Fenton (Respondent). That License was due to expire on

1 February 28, 2014, but it was cancelled on February 20, 2014, when Respondent elected to be  
2 licensed as both a Smog Check Inspector (EO), License No. 138504, effective February 20, 2014,  
3 and a Smog Check Repair Technician (EI), License No. 138504, effective March 20, 2015. The  
4 Smog Check Inspector License and Smog Check Repair Technician License were in effect at all  
5 times relevant to the charges brought in this Petition to Revoke Probation and will expire on  
6 February 29, 2016, unless renewed.

#### 7 JURISDICTION

8 4. The Petition to Revoke Probation No. 79/16-28 was filed before the Director of  
9 Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently  
10 pending against Respondent. The Petition to Revoke Probation and all other statutorily required  
11 documents were properly served on Respondent on October 1, 2015. Respondent timely filed his  
12 Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke  
13 Probation No. 79/16-28 is attached as Exhibit A and incorporated by reference.

#### 14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, and understands the charges and allegations in Petition  
16 to Revoke Probation No. 79/16-28. Respondent also has carefully read, and understands the  
17 effects of this Stipulated Settlement and Disciplinary Order.

18 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
19 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be  
20 represented by counsel, at his own expense; the right to confront and cross-examine the witnesses  
21 against him; the right to present evidence and to testify on his own behalf; the right to the  
22 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
23 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
24 by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
26 every right set forth above.

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1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
2 writing executed by an authorized representative of each of the parties.

3 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
4 the Director may, without further notice or formal proceeding, issue and enter the following  
5 Disciplinary Order:

6 **ORDER**

7 IT IS HEREBY ORDERED that Smog Check Inspector License No. EQ138504 and Smog  
8 Check Repair Technician License No. EI138504, issued to Respondent Richard Daniel Fenton,  
9 are revoked by the Director of Consumer Affairs.

10 1. The revocation of respondent's smog check inspector license and smog check repair  
11 technician license by the Bureau shall constitute the imposition of discipline against respondent.  
12 This stipulation constitutes a record of the discipline and shall become a part of respondent's  
13 license history with the Bureau of Automotive Repair.

14 2. Respondent shall lose all rights and privileges as a station owner in California as of  
15 the effective date of the Director's Decision and Order.

16 3. Respondent shall cause to be delivered to the Bureau his pocket licenses and, if any  
17 were issued, his wall certificates on or before the effective date of the Decision and Order.

18 4. If respondent ever files an application for licensure or a petition for reinstatement in  
19 the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must  
20 comply with all the laws, regulations, and procedures for reinstatement of a revoked license in  
21 effect at the time the petition is filed, and all of the charges and allegations contained in Petition  
22 to Revoke Probation Number 79/16-28 shall be deemed to be true, correct, and admitted by  
23 respondent when the Director determines whether to grant or deny the petition.

24 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
25 amount of \$2,412.50 prior to issuance of a new or reinstated license.

26 6. If respondent should ever apply or reapply for a new license or certification, or  
27 petition for reinstatement of a license, by any other licensing agency in the State of California, all  
28 of the charges and allegations contained in Petition to Revoke Probation Number 79/16-28 shall

1 be deemed to be true, correct, and admitted by respondent for the purpose of any Statement of  
2 Issues or any other proceeding seeking to deny or restrict licensure.

3 ACCEPTANCE

4 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
5 stipulation and the effect it will have on my Smog Check Inspector License and Smog Check  
6 Repair Technician License. I enter into this Stipulated Settlement and Disciplinary Order  
7 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
8 Director of Consumer Affairs.

9 DATED: 2/28/16

  
RICHARD DANIEL FENTON  
Respondent

11 ENDORSEMENT

12 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
13 submitted for consideration by the Director of Consumer Affairs.

14 Dated: 3/17/16

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Senior Assistant Attorney General

  
DIANN SOKOLOFF  
Supervising Deputy Attorney General  
Attorneys for Complainant

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22 90615854.docx

**Exhibit A**

**Petition to Revoke Probation No. 79/16-28**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
4 State Bar No. 161082  
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8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
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12 In the Matter of the Petition to Revoke  
Probation Against

Case No. 79/16-28

13 **RICHARD DANIEL FENTON**  
14 **2360 Mendocino Avenue A2 #173**  
**Santa Rosa, CA 95403**

**PETITION TO REVOKE PROBATION**

15 **Smog Check Inspector License No.**  
16 **EO138504**  
**Smog Check Repair Technician License No.**  
17 **EI138504**

18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in his  
23 official capacity as the Chief of the Bureau of Automotive Repair (BAR), Department of  
24 Consumer Affairs.

25 2. In or about 1998, the BAR issued Advanced Emission Specialist (EA) Technician  
26 License No. 138504 to Richard Denton Fenton (Respondent). That License was due to expire on  
27 February 28, 2014, but it was cancelled on February 20, 2014, when Respondent elected to be  
28 instead licensed as a Smog Check Inspector (EO), License No. 138504, effective February 20,



1 2014, and a Smog Check Repair Technician (EI), License No. 138504, effective March 20, 2015.  
2 The Smog Check Inspector License and Smog Check Repair Technician License were in effect at  
3 all times relevant to the charges brought in this Petition to Revoke Probation and will expire on  
4 February 29, 2016, unless renewed.

5 **JURISDICTION**

6 3. This Petition to Revoke Probation is brought before the Director of the Department of  
7 Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the  
8 following laws,

9 4. Section 9884.7 of the Business and Professions Code states:

10 "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
11 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair  
12 dealer for any of the following acts or omissions related to the conduct of the business of the  
13 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
14 technician, employee, partner, officer, or member of the automotive repair dealer.

15 (1) Making or authorizing in any manner or by any means whatever any statement written  
16 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable  
17 care should be known, to be untrue or misleading.

18 ...

19 (6) Failure in any material respect to comply with the provisions of this chapter or  
20 regulations adopted pursuant to it.

21 ..."

22 5. Section 118, subdivision (b), of the Business and Professions Code provides that the  
23 suspension or expiration of a license shall not deprive the Director of jurisdiction to proceed with  
24 a disciplinary action during the period within which the license may be renewed, restored,  
25 reissued or reinstated.

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1 determines it to be necessary to meet the findings of Section 44001. The visual or functional  
2 check shall be performed in accordance with procedures prescribed by the department.

3 (g) A determination as to whether the motor vehicle complies with the emission standards  
4 for that vehicle's class and model-year as prescribed by the department.

5 (h) The test procedures may authorize smog check stations to refuse the testing of a vehicle  
6 that would be unsafe to test, or that cannot physically be inspected, as specified by the department  
7 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the  
8 vehicle from compliance with all applicable requirements of this chapter."

9 7. Section 44032 of the Health and Safety Code states:

10 "No person shall perform, for compensation, tests or repairs of emission control devices or  
11 systems of motor vehicles required by this chapter unless the person performing the test or repair  
12 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
13 station. Qualified technicians shall perform tests of emission control devices and systems in  
14 accordance with Section 44012."

15 8. Section 44059 of the Health and Safety Code states:

16 "The willful making of any false statement or entry with regard to a material matter in any  
17 oath, affidavit, certificate of compliance or noncompliance, or application form which is required  
18 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business  
19 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

20 9. Section 44072.2 of the Health and Safety Code states:

21 "The director may suspend, revoke, or take other disciplinary action against a license as  
22 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the  
23 following:

24 "(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health  
25 and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the  
26 licensed activities.

27 "(b) Is convicted of any crime substantially related to the qualifications, functions, and  
28 duties of the licenseholder in question.

1       "(c) Violates any of the regulations adopted by the director pursuant to this chapter.

2       "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

3       "(e) Has misrepresented a material fact in obtaining a license.

4       "(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

5       "(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to  
6 have those records available for inspection by the director or his or her duly authorized  
7 representative for a period of not less than three years after completion of any transaction to  
8 which the records refer, or refuses to comply with a written request of the director to make the  
9 records available for inspection.

10       "(h) Violates or attempts to violate the provisions of this chapter relating to the particular  
11 activity for which he or she is licensed."

#### 12                               REGULATORY PROVISIONS

13       10. Section 9889.22 of the Business and Professions Code states:

14       "The willful making of any false statement or entry with regard to a material matter in any  
15 oath, affidavit, certificate of compliance or noncompliance, or application form which is required  
16 by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of  
17 Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as  
18 provided in the Penal Code."

#### 19                               FACTUAL BACKGROUND

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21       11. On or about January 7, 2011, Accusation 79/11-51 was filed against Respondent. It  
22 alleged that Respondent fraudulently issued a Smog Certificate of Compliance to a BAR  
23 undercover vehicle. On or about December 30, 2011, the Director of Consumer Affairs for the  
24 Bureau of Automotive Repair, issued a decision, effective February 6, 2012. Included in this  
25 decision was a disciplinary order revoking Respondent's Advanced Emission Specialist license.  
26 However, the revocation was stayed and Respondent's Advanced Emission Specialist license  
27 was placed on a four year probation. The terms and condition of probation included complying  
28

1 with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.  
2 A failure to comply with the terms and condition of probation would result in permanent  
3 revocation of Respondent's Advanced Emission Specialist license. On or about February 27,  
4 2012, the Bureau conducted a Probation Conference with Respondent to discuss the methods by  
5 which he planned to achieve and maintain compliance with the terms and conditions of probation.

6 12. On or about January 16, 2013, Accusation 79/13-41 was filed against Respondent. It  
7 alleged that Respondent violated his probation by fraudulently issuing a Smog Certificate of  
8 Compliance to a BAR undercover vehicle. On or about October 16, 2013, the Director of  
9 Consumer Affairs for the Bureau of Automotive Repair, issued a decision, effective November 7,  
10 2013. Included in this decision was a disciplinary order revoking Respondent's Advanced  
11 Emission Specialist license. However, the revocation was stayed and Respondent's Advanced  
12 Emission Specialist license was placed on an additional two years probation. The terms and  
13 condition of probation included complying with all statutes, regulations, and rules governing  
14 automotive inspections, estimates, and repairs. A failure to comply with the terms and condition  
15 of probation would result in permanent revocation of Respondent's Advanced Emission Specialist  
16 license. On or about November 12, 2013, the Bureau conducted a Probation Conference with  
17 Respondent to discuss the methods by which he planned to achieve and maintain compliance with  
18 the terms and conditions of probation.

19 **FIRST CAUSE TO REVOKE PROBATION**  
20 **(Failure to Obey All Laws)**

21 13. At all times after the effective date of Respondent's probation, Condition 1 of  
22 Stipulated Settlement and Disciplinary Order 79/13-41 stated:

23 "1. **Obey All Laws.** Comply with all statutes, regulations and rules governing  
24 automotive inspections, estimates and repairs."

25 14. Respondent's probation is subject to revocation because he failed to comply with  
26 Probation Condition 1, referenced above, by not obeying all laws, as more specifically explained  
27 in paragraph 13, above. The facts and circumstances regarding this violation are as follows:  
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15. On March 25, 2015, a documented undercover vehicle operation was conducted at Another Smog Station where Respondent was employed as a smog check inspector to confirm compliance with Respondent's terms and conditions of probation. During the documented undercover vehicle operation, Respondent fraudulently issued a smog certificate of compliance to the vehicle being used in the undercover operation with the ignition timing adjusted beyond specifications. Respondent failed to comply with the terms and conditions set forth in the Stipulated Settlement and Order by performing an improper inspection and issuing a fraudulent Certificate of Compliance.

**SECOND CAUSE TO REVOKE PROBATION**  
**(Violation of Probation)**

16. Complainant hereby incorporates paragraph 14 above, inclusive, as though set forth fully.

17. At all times after the effective date of Respondent's probation, Condition 6 of Stipulated Settlement and Disciplinary Order 79/13-41 stated:

"6. Violation of Probation. Should the Director of Consumer Affairs determine that either Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke the license"

18. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, by failing to obey all laws, as more specifically explained in paragraph 16, above.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Petition to Revoke Probation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case No. 79/13-41 and imposing the disciplinary order that was stayed thereby revoking Smog Check Inspector License No. EO138504 issued to Richard Daniel Fenton;

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2. Revoking or suspending Smog Check Repair Technician License No. EI138504 issued to Richard Daniel Fenton;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/21/15

Patrick Dorais by Doug Balatti  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant

SF2015900415